



Michael O. Leavitt
Governor

State of Utah
Department of Transportation

John R. Njord, P.E.
Executive Director

February 13, 2003

Mr. David L. Elmont
STOEL RIVES, LLP
201 South Main Street, Suite 1100
Salt Lake City, UT 84111

Subject: Findings and Order - File No. 02-10 - Desert Star Theatrics, Inc. Outdoor Advertising

Dear Mr. Elmont:

Enclosed are the Findings and Order with respect to the hearing held January 28, 2003. We appreciate your time and effort in working with us in this matter. I remind you that should you desire to pursue your appeal further that you have 30 days to file a court action.

Sincerely,

David K. Miles, P. E.
Hearing Officer

DKM:js

cc: Shawn Debenham
Mark Burns
Jim Beadles
Kay M. Lewis, Jensen & Lewis
Jody K. Burnett, Williams & Hunt

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FINDINGS AND ORDER ON APPEAL
APPLICATION FOR PERMIT BY DESERT STAR THEATRICALS, INC.
FILE NO. 02-10

February 13, 2003

On June 10, 2002, Desert Star applied for a billboard permit at 4950 South Galleria Drive, Murray, Utah. Shawn Debenham, a permit officer with UDOT Region 2, denied the permit on the grounds that the proposed billboards would be located within 500 feet of existing billboards. More than three years before Desert Star applied for the billboard location, the Third District Court for Salt Lake County ordered Utah Sign to remove its billboard. This was the outcome of a contractual dispute between Utah Sign and the landowners (*Utah Sign, Inc. v. Crosby*, Case No. 960909584, Findings of Fact, Conclusions of Law and Judgment, March 13, 1999, at page 7.)

Due to the court order, Desert Star claims, Utah Sign was no longer entitled to its permit. The property upon which Utah Sign's billboards had existed was open territory and available to the first applicant. Desert Star was that applicant. On the other hand, Region Two, and Utah Sign, intervenor in the appeal, claim that the Utah Court of Appeals and, subsequently, the Third District Court, voided the March 13, 1999 order).

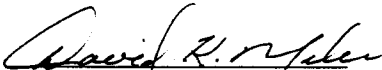
As part of a settlement agreement between Utah Sign and Crosby, the parties jointly asked the Utah Court of Appeals to vacate the Third District Court's 1999 order. The appellate court did so and Judge Timothy Hanson of the district court, subsequently entered an order expressly making his previous order null and void.

Desert Star and Region Two/Utah Sign agree that the key issue is the effect the vacatur had on the validity of Utah Sign's permit. I agree with Region Two/Utah Sign

that the appellate and district court vacatur made the 1999 judgment null and void. *Boguslavsky v. South Richmond Securities, Inc.*, 225 F.3d 127, 130, n.5 (2nd Cir. 2000) (a judgment vacating a previous order replaces the original judgment). When a judgment is null and void, it returns the party for whom the vacatur order is issued to its antecedent rights). *Id.* n.5; *Merrill Lynch v. Commodities Inc. v. Richal Shipping Corp.*, 581 F. Supp. 933 (D.C. N. Y. 1984). UDOT cannot change the court's order and is bound by it.

Consequently, because Utah Sign never legally lost its permit, the billboard location for which Desert Star applied was already taken. Utah Sign was entitled to maintain its permit. For these reasons, I affirm Region 2's denial of Desert Star's application.¹

Pursuant to Utah Code Ann. § 63-46b-15, Desert Star may petition for review of this order by filing a complaint with the Third District Court. The complaint must be filed within 30 days of the issuance of this Final Order. Alternatively, Desert Star may petition for reconsideration following the procedures set forth in Utah Admin. Code R907-1-5 (2002). A petition for reconsideration will not preclude Desert Star from filing with the district court within 30 days of UDOT's decision on reconsideration.


David K. Miles, P. E.
Operations Engineer
Administrative Hearing Officer

¹ On February 12, 2003, Desert Star filed a letter stating that Utah Sign had incorrectly measured the distance between its proposed sign and a sign owned by Viacom. Properly measured, claims Desert Star, the distance was greater than the required 500 feet. However correct this assertion may be, it is irrelevant. Region 2 denied the permit request because the proposed Desert Star sign was within 500 feet of Utah Sign's location, not Viacom's. Desert Star has never challenged Region 2's calculation of that distance.